Board — Unlawful increase — Control of Rent Ordinance (Cap. 242.)

This was an appeal against the decision of Choor Singh J. ([1965] 1 M.L.J. 77). The appellants claimed possession of certain controlled premises from the respondent. The standard rent of the premises was $750. The premises consisted of a large piece of land of some 550 acres on which temporary buildings had been erected; many new buildings had been erected on it since September 7, 1947 and the parties had by agreement fixed the rent at $1,300 a month from April 1, 1953 and at $1,400 per month from April 1, 1958. No application was however made to the Rent Conciliation Board. The respondent had counterclaimed for repayment of rents, in excess of the standard rent of $750, received by the appellants. Choor Singh J. gave judgment in favour of the respondent on the counterclaim and the appellants appealed.

Held: the premises in this case consisted of the land with a building or buildings on it and the entity did not become a new entity because more buildings had been erected on it;

(2) the increase of rent in this case had not been sanctioned by the Rent Conciliation Board and therefore the increase was unlawful and the learned trial judge was correct in giving judgment for the recovery of the rents received in excess of the standard rent.

[**Editorial Note:** The Honourable the Lord President who presided at the hearing of the appeal did not sit in the Federal Court when it delivered the reserved judgment in Singapore.]

FEDERAL COURT.

C. L. Duff for the appellants.

J. Grimberg for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (Singapore): This appeal is connected with F.C. Civil Appeal No. 111 of 1964* and is in respect of a counterclaim by the respondent for the repayment of rents, in excess of the standard rent, received by the appellants.

The appellants in the action were seeking, *inter alia,* to recover possession of certain lands comprising an area of some 550 acres from the respondent. The position taken by both parties by their pleadings and before this court was that the subject matter of the action was premises within the definition of "premises" contained in section 2 of the Control of Rent Ordinance (Cap. 242).

It was never in dispute that the standard rent of the "premises" was $750 a month and that no application was ever made during the period when the respondent was the tenant to the Rent Conciliation Board to vary this standard rent. The parties however by agreement fixed the rent at $1,300 per month from 1st April 1953 and at $1,400 per month from 1st April 1958.

On those facts the trial judge gave judgment in favour of the respondent on her counterclaim and the appellants now appeal against this part of the judgment on the ground that at all material times the premises had suffered a change of identity by virtue of the large addition of new buildings on the land which were built and completed after the 7th September 1947.

It is submitted by counsel for the appellants that by virtue of the many new buildings erected from time to time since 7th September 1947, at some point or other there comes a time when the court will say the premises are substantially changed and that therefore there must be a new standard rent which should be the rent at which the premises were first let after that change of identity.

In the absence of special circumstances which do not exist in this case, it seems to me when a piece of land with a building or buildings on it is let and the land so let comes within the definition of "premises" in section 2 of the Control of Rent Ordinance (Cap. 242), that this piece of land continues to remain controlled premises as long as it continues to be the subject matter of a single letting, notwithstanding that other buildings may have subsequently been erected on it.

It is the land with a building or buildings on it that is the entity in such a case and the entity does not become a new entity simply because more buildings have been erected on it. Any increase in the standard rent must, to be a lawful increase, be one sanctioned by the Rent Conciliation Board on an application made to the board under the provisions of the Control of Rent Ordinance.

For these reasons I would dismiss the appeal on the counterclaim with costs.

Tan Ah Tah F.J.: I agree.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

* *Ante,* p. 121.

GURBACHAN SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Yong J.) April 6, 1966]

[Alor Star — Criminal Appeal No. 83 of 1964]

Bribery and corruption — Whether necessary to show that favour had been shown — Discretion of prosecution to call witnesses — Admission of tape-recorded conversation — Corroboration of accomplice evidence — Allegation that findings of fact by trial court were wrong — Production of police inquiry paper — Claim of privilege by Minister — Privilege claimed over class of documents — Power of court to inspect file and to order production — Prevention of Corruption Act, 1961, s. 4(a).

Evidence — Privileged document — Police inquiry paper.

Evidence — Hearsay — Tape-recorded conversation — Admissibility.

The appellant had been convicted on a charge under section 4(a) of the Prevention of Corruption Act, 1961.

On the hearing of the appeal, the appellant sought to introduce further evidence for the admission of a police inquiry paper. A certificate had been issued by the Minister of Home Affairs objecting to the production of the file and it was stated that the objection to production was made only on principle. A large number of grounds were adduced on the appeal, among them being the following:—

(1) the learned president's finding of facts were wrong on the ground that he erred on the facts and misdirected himself;

(2) the evidence showed that no favour had been shown by the appellant;

(3) the prosecution had failed to call material witnesses;

(4) certain hearsay evidence, tape-recorded conversation and films had been wrongly admitted in evidence; and

(5) there was no corroboration of the evidence of the complainant.

Held: (1) in cases where the Minister claims privilege over a class of documents, the court can inspect the document in question to ascertain whether in point of fact its production in court would be injurious to the public interest and as in this case the court after inspecting the contents of file had come to the conclusion that they do not substantially relate to affairs of State nor give any reasonable grounds for believing that the production of the file would be injurious to the public interest, it would order the production of the file;

(2) in this case the appellant had not satisfied the court that the president of the sessions court had in any way misdirected himself or that any advantage enjoyed by him by reason of his having seen the witnesses was not sufficient to explain or justify his conclusions and therefore, the appellate court will not upset his findings of facts;

(3) on a charge of corruptly receiving money or goods it is not necessary to prove that favour had been shown by the accused person;

(4) the calling of the witnesses was a matter for the discretion of the prosecution and there was nothing improper in the action of the prosecution in this case;

(5) the learned president was acting on correct principles in admitting the evidence of statements to prove that they were made and of tape-recorded conversation and films;

(6) the learned president was justified in relying on the evidence of the complainant and regarding the evidence of the prosecution witnesses and of the documentary evidence as corroboration of his evidence.

Cases referred to:—

(1) *Re Grosvenor Hotel London (No. 2)* [1964] 3 W.L.R. 992.

(2) *R.* v. *Carr* (1956), 40 Cr.App. Rep. 188; [1957] 1 W.L.R. 165; [1956] 3 All E.R. 979.

(3) *Khoon Chye Hin* v. *Public Prosecutor* [1961] M.L.J. 105 at p. 109.

(4) *Samsuddin* v. *Public Prosecutor* [1962] M.L.J. 405 at p. 407.

(5) *Subramaniam* v. *Public Prosecutor* [1956] M.L.J. 220.

(6) *Rup Chand* v. *Mahabir Parshad & Anor.* A.I.R. 1956 Punjab 173.

(7) *Public Prosecutor* v. *Gurbachan Singh* [1964] M.L.J. 141.

(8) *R.* v. *Mills* [1962] 3 All E.R. 298.

(9) *Tan Tek Yan* v. *Samuel* [1964] M.L.J. 283.

(10) *R.* v. *Baskerville* [1916] 2 K.B. 658 at p. 664.

CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

Wan Suleiman bin Pawan Teh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yong J.: The appellant Gurbachan Singh was convicted by the president of the sessions court, Sungei Patani, and sentenced to 9 months imprisonment and a fine of $446 in default 6 months imprisonment on the following charge:—

"That you, on the 4th of June, 1963 at about 7.45 p.m. at P.W.D. Quarters No. 853, Changloon Road, Jitra, in the State of Kedah being an agent of the Government of the Federation of Malaya, to wit the officer-in-charge of the Police District, Jitra, did corruptly receive the sum of $350 (dollars Three Hundred and fifty only), two Bridgestone motor car tyres size 500 x 15 valued at $96 and two fishes (bawal itam value unknown) from one Lee Khim Mean alias Lee Yok Sik alias Ah Seng, as an inducement for showing favour to Hup Seng Co., Butterworth and Lum Co., Bukit Mertajam in relation to your principal's affairs, to wit, by permitting the motor lorries belonging to the said companies to enter the Federation of Malaya from Thailand at Changloon village after 6.00 p.m. and also by ensuring that the aforesaid lorries would not be prosecuted for carrying legally excessive loads and that you have thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act, No. 42/61."

At the commencement of the hearing of this appeal, the appellant by notice of motion, supported by affidavit applied for an order that he be at liberty to adduce further evidence, for the admission into evidence of Police Enquiry Paper (Traffic) No. 236/63.

Mr. Jag-Jit Singh said that although he had a photostatic copy of the file and the minutes he nevertheless wanted the original file and minutes of the PEP (T) 236/63 to be produced and admitted into evidence. He further contended that the deputy public prosecutor had wrongly induced Dato' Ismail, the Minister of Home Affairs, to issue a certificate claiming privilege over the production of the said file and that the Minister had signed the certificate without having read the said file and after having issued the said certificate wrote to the Attorney-General expressing his displeasure to the effect that the claim for privilege over PEP (T) 236/63 by the deputy public prosecutor was "ill-considered and without substance" and that the Attorney-General in turn conveyed the Minister's annoyance to the deputy public prosecutor. There could not be much doubt that a letter to this effect had been written and sent by the Attorney-General to the deputy public prosecutor, as Mr. Jag-Jit Singh was able to quote and give its reference number and date correctly. (A.G.Y. 85/11 dated 27th July, 1965).

The deputy public prosecutor in his reply said that many odd things had happened in this case and that the appellant was able to obtain

copies of secret official documents even from high Government departments through annonymous persons who were alleged to have sent these documents to appellant's counsel. He said that the Minister's certificate was perfectly regular and that the production of the file PEP (T) 236/63 could not have affected the learned court presidents' verdict. He claimed that there was nothing to hide in the said file. He objected to its production only on principle. The principle was that the defence cannot be allowed to call for any police papers merely on its fancy. The deputy public prosecutor conceded that the Minister was claiming privilege over a class of documents (namely police papers) and not the contents of the said file. He said that on the evidence, practically the whole of the contents of PEP (T) 236/63 have been disclosed in court by defence counsel's cross-examining of prosecution witnesses. The defence after having proved the contents of the said file, later objected to them. He said the court president himself had read the said file and no injustice had been caused to the appellant. He referred this court to the correspondence between appellant's former counsel and the Minister, and he strongly objected to counsel's allegations and insinuations that the Minister had been misled in issuing the certificate.

Mr. Jag-Jit Singh in his reply admitted that the defence had obtained through questioning and arguments the contents of PEP (T) 236/63 and that he could not challenge the deputy public prosecutor's allegation that the court president had himself read PEP (T) 236/63. Another important point which he submitted was that there was no affidavit from the Minister to support his claim for privilege and the appellant's affidavit therefore stood uncontradicted.

The question which this court has now to decide is this: In cases where the Minister claims privilege over a class of documents, can the court, in view of the Minister's certificate claiming privilege, inspect the file PEP (T) 236/63 in order to ascertain whether in point of substance, its production in court would be injurious to the public interests. The better opinion of the legal authorities show that it could, in cases where the Minister's claim for privilege was over a class of documents.

In the case of *Re Grosvenor Hotel London (No. 2)*,[1] the Court of Appeal held

(a) "It (the court) can if it thinks fit, call for the documents and inspect them itself so as to see whether there are reasonable grounds for withholding them: ensuring of course, that they are not disclosed to anyone else. It is rare indeed for the court to override the Minister's objection, but it has the ultimate power, in the interest of justice, to do so. After all, it is the judges who are the guardians of justice in this land: and if they are to fulfil their trust, they must be able to call upon the Minister to put forward his reasons so as to see if they outweigh the interests of justice" — *per* Lord Denning M.R. (at page 1015),

(b) "The objection of a Minister, even though taken in proper form should not be conclusive. If the court should be of the opinion that the objection is not taken in good faith or that there are no reasonable grounds for thinking that the production of documents would be injurious to the public interest, the court can override the objection and order production" — *per* Lord Denning M.R. (at page 1015).

(c) "There is a residual power in the courts to override the executive in cases where the Crown privilege is unreasonably claimed for a class of documents . . . It is a power which would certainly be used very sparingly. But it is a useful and indeed necessary power, and should not be abdicated if the courts are to preserve their function of protecting the vital interest of the public in seeing that justice is done." — *per* Lord Salmon L.J. (at page 1029).

After careful consideration of the contents of the said file PEP (T) 236/63 this court has come to the conclusion that they do not substantially relate to affairs of State nor do they give any reasonable ground for believing that the production of this file would be injurious to the public interests. This court therefore orders its production. PEP (T) 236/63 is now admitted into evidence and marked as Exhibit "A1".

Before I go into the facts of the case, I have this observation to make. This trial for sheer verbosity and length (52 days of hearing) has created an unprecedented record. The appeal book supplied to this court is nearly 4 inches thick and contains no less than 844 closely typewritten foolscap pages. Much of the time and space were taken up by arguments, some of which were irrelevant and unnecessary. Every conceivable objection was taken, and in consequence a simple case has been turned into a difficult one. The learned president was correct when he said that "the case against the accused when the matter is clearly understood, is reduced to a small compass."

According to the prosecution the appellant was a senior police officer of considerable experience in criminal investigations and was at all material times the O.C.P.D. (Officer-in-charge of Police District) of Jitra.

Sometime in February 1963, the appellant came to know one Lee Khim Mean (PW1), a shopkeeper of No. 1, Pekan Bahru, Changloon, who was alleged to have committed on 21st February, 1963 a traffic offence of using one of his two private cars as an illegal taxi. The prosecution alleged that the appellant had requested PW1 to approach three lorry companies (1) Hup Seng of Butterworth (2) Chin Hup Seng of Bukit Mertajam and (3) Lam San of Penang and to inform them that he (the appellant) would allow their lorries to come into Malaya from Thailand after 6 p.m. and that he would not arrest them for illegally carrying excessive loads. For these favours the appellant wanted a monthly bribe of $1,000 for 10 lorries.

There is a police gate at Changloon and this gate was closed at 6 p.m. each day and reopened on the following day at 6 a.m. Changloon is a border village situated between Thailand and Malaya, but some distance away from the border on the Malayan side.

On 27th February, 1963 PW1 communicated appellant's offer to one Hashim bin Puteh, a lorry attendant of Hup Seng of Butterworth. Of the said three companies Hup Seng of Butterworth was the biggest and had the most number of lorries. Two or three days later on information received from Hashim, PW1 informed the appellant that no reply had been received from the three companies and that the matter was not likely to succeed. Thereupon the appellant became angry and threatened to stir up trouble for the three lorry companies.

One or two days later Hashim informed PW1 that the police had started giving trouble, and requested PW1 to inform the appellant that the said three lorry companies would now be willing to pay a monthly bribe of only $500 for their 10 lorries, the registered numbers of which were then given to him (PW1). On the same day PW1 informed the appellant who agreed to accept a monthly bribe of $500 for 10 lorries, the registered numbers of which were given to him, but the appellant asked for an additional sum of $50 for each additional lorry beyond the ten. Appellant also asked PW1 to tell the lorry companies that he (the appellant) also wanted some fish. It appears from the evidence that some of the 10 lorries were fish lorries carrying fish from Thailand into Malaya.

In pursuance to this agreement, Hashim in the second week of March 1963 handed to PW1 $500 in cash and some two or three katties of fish for delivery to appellant. On the same day PW1 delivered the money and the fish to appellant. Thereafter fish was supplied to the appellant free and, twice weekly.

The 2nd monthly bribe of $500 was paid to appellant in the first week of April, and the third monthly bribe of $500 in the first week of May 1963. On this occasion appellant asked PW1 to get two motor car tyres from Hup Seng of Butterworth (which was one of the said 3 lorry companies) and gave PW1 a chit showing the size of the tyres required for his car. Hashim after being informed of the appellant's request, asked PW1 to buy the two tyres and to deduct the price of the tyres from the June payment of $500.

On 9th May 1963 PW1 went to the Traffic Office concerning the detention of his car No. K. 7102, which was again alleged to have been illegally used as a taxi on 7th May 1963. There he saw Inspector Said Muir and subsequently other police officers including Deputy Superintendent of Police, Stevenson (PW16). During these interviews PW1 was alleged to have disclosed to them the offence of corruption committed by the appellant. A trap was accordingly laid to catch the appellant. PW1 was instructed to buy the two motor car tyres, which the appellant had requested him to obtain from Hup Seng of Butterworth and not to deduct the costs of the tyres from the June payment. After purchase PW1 handed the tyres to Stevenson.

For the June 1963 bribe, Hashim on 4th June 1963 handed to PW1 only $350 and said that the amount was from Hup Seng Co. and Lam San Co. and was for complete settlement. He then gave to PW1 the registered numbers of the lorries concerned. He also gave the reasons why the amount was reduced to $350. Shortly thereafter Hashim also brought some fish to be given to the O.C.P.D. (appellant). PW1 then handed the money ($350) and the fish to Stevenson as arranged.

On the same evening, Stevenson handed to PW1 $350 marked notes, the two fish and the two tyres with instruction to give them to the appellant. At about 7.30 p.m. PW1 went to appellant's house and after exchanging pleasantries near the door way, was asked by appellant to place the two fish "Taroh dalam tepi pintu", meaning "Put them inside, by the side of the door." PW1 did as requested. After that he sat on one of the chairs which was immediately below a window and appellant sat on the other chair. They sat side by side. He told appellant that the proprietors of the lorries gave only $350 for that month (June) because the proprietor of Chin Hup Seng (one of the aforesaid 3 lorry companies) had refused to pay on the ground that the appellant had on the 30th of May disallowed two of his lorries to enter Malaya after 6 p.m. although his lorry man had telephoned to appellant. PW1 then handed the $350 marked notes to the appellant and the appellant asked him to place the money behind him near the window sill. PW1 did as requested. Later appellant explained to PW1 that there had been a misunderstanding on the part of the proprietor of Chin Hup Seng because "you (PW1) were the person who always telephoned to me (appellant) and on that occasion somebody else did." Appellant asked PW1 to explain this to the proprietor of Chin Hup Seng so that the former arrangement might continue as before.

PW1 then informed the appellant that he had brought the two tyres which appellant had asked him to get from Hup Seng of Butterworth. Appellant followed him out when he went to fetch the tyres from his car. After bringing out the tyres from the car PW1, at the request of the appellant, placed them by the side of the chair where he had sat earlier. The photographs

(exhibits P-5) showed the position of the tyres and chairs. He then left the appellant's house, and reported back to Stevenson who was waiting for him at the appointed place.

After this Stevenson waited for some time before raiding the appellant's house. When he raided appellant's house at 9 p.m. Stevenson recovered from appellant's house the same two tyres, the two fish and $350 marked notes. The fish was found in the refrigerator in appellant's kitchen and the marked notes in the inner drawer of the dressing table inside accused's bedroom.

Mohamed Ali bin Safaar (PW5), a police sergeant and O.C.S. Changloon, testified that the police gate was always closed at 6 p.m. and reopened at 6 a.m. each day. When the gate was closed there was no other way by which a lorry coming from Thailand could enter Malaya. Vehicles arriving at the gate after 6 p.m. would have to wait there till the following morning. Between 1st February 1963 and 4th June 1963 the police gate was ordered to be opened after 6 p.m. on not less than 7 occasions. On all these occasions the gate was opened on the instructions of the appellant. Appellant gave his instructions by telephone and the instructions were duly recorded in the police diary. (See exhibit P-8. Translation at page 657). PW5 further said that on 2nd April 1963 he suspected one of these lorries that came into Malaya from Thailand was carrying excessive load. It was a green lorry and its goods were being examined by the customs at that time. After completion of the examination by the customs he wanted the goods to be reloaded back into the green lorry so that it could be taken to Alor Star for weighing, but 4 or 5 Chinese wanted the goods to be loaded into a different lorry. PW5 refused to allow this. At this crucial juncture he was informed by the customs that he was wanted on the 'phone by the O.C.P.D. (appellant). He went to the phone and spoke to the appellant. Appellant instructed him to allow the goods to be loaded into a different lorry and not to insist that the goods be reloaded back into the green lorry from which they had been unloaded. Prior to 2nd April 1963 it had never been the practice for lorries to go to the customs barrier to share excessive loads of lorries coming from Thailand. This witness was severely cross-examined on the vital part of his evidence.

Thum Kok Yeng (PW11) who was a travel-control officer at Changloon from 4th February 1963 to December 1963, and whose duty was to stop undesirable persons from entering Malaya from Thailand, confirmed that the police gate at Changloon would be closed and locked at 6 p.m. on each day. He had known occasions when the gate was opened after 6 p.m. on the authorisation of the appellant. On 2nd April 1963 he received a telephone call from the appellant to unlock the gate and to allow the lorries which were outside the police gate to come in. sergeant Ali (PW5) who was in charge had told him that one of the lorries was overloaded and he wanted to take it to Alor Star for weighing. The goods had been unloaded for customs examination from the lorry with the assistance of the people from the lorry. When asked to reload them back to the same lorry they refused to do so. At that moment sergeant Ali was wanted on the telephone. When he returned, he informed him that the appellant had ordered the release of the lorry. The lorry was accordingly released. There was another empty lorry and part of the goods were then loaded onto that empty lorry.

The above is a brief summary of the main facts of the prosecution case.

The appellant in his defence admitted that he had asked PW1 to supply him with fish once or twice a week as from March 1963 but he denied that the fish was given to him as a bribe. He said he had paid monthly for the fish so supplied. He admitted that on the night of 4th June 1963 he had received two fish from PW1 and was expected to pay for them only at the end of each month.

He denied that PW1 had paid him $500 in March; $500 in April; and $500 in May 1963. He said that on the relevant dates in question he had not received any money from PW1. On the date of the alleged first payment he was entertaining guests in his house, on the date of the second payment he was away from his quarters at the relevant times, and on the third payment he was in Penang.

He admitted that he did on or about 6th or 7th of May 1963 ask PW1 to purchase two motor car tyres for him. He admitted that on 4th June 1963 PW1 came to his house at 7.30 p.m. and had brought the fish as well as the tyres. He asked PW1 to get a receipt for the tyres and said he would pay him later.

Shortly before 9 p.m. he switched on the porch light in order to take in the tyres. When he walked into the porch he noticed a sum of money lying on the window sill. He said he was going to find out from PW1 whether he knew anything about this money. After finding the money and talking to his wife he went into his bedroom to get dressed. Just before putting his shirt on, he placed the money in the drawer of his table which was open. He placed the money there in order to put on his shirt. He further denied all the other allegations made against him by the prosecution.

Under cross-examination when appellant was asked whether it was his practice to see

accused persons who were suspected of having committed criminal offences in his house, he replied that PW1 came to his (appellant's) house on his own accord. Appellant agreed that he had (on 21st February 1963) detained PW1's car (K. 7102) after long observation that it had been illegally used as a taxi. He also admitted that he had (on 20th March 1963) stopped and searched PW1's car (PA. 8694) on suspicion that it was carrying opium. Inspite of this he had asked PW1 to get him tyres and fish. He agreed that he had asked PW1 for a receipt for the two tyres which he had asked PW1 to get, and that the request for receipt was not for the purpose of finding out how much had been deducted from the June payment of $350.

When asked whether it was not curious that he should buy fish from PW1, a sundry goods dealer, who lived 13 miles away from Jitra when he (appellant) could have obtained them from Jitra market, which was only half a mile away from his house, the appellant replied that it was not always possible to get this particular type of fish from the market. He denied that he had obtained the fish from PW1 because it was supplied free. When asked whether it would not cost PW1 a lot of money to bring the fish from Changloon to Jitra, appellant replied that he did not know and that PW1 might have brought them on his visits to Jitra. He never thought that the fish came from the fish lorries which came from Thailand and stopped at Changloon.

Regarding the $350, appellant admitted that he counted the money, not because he wanted to know how much PW1 had paid him for the June payment. When asked —

"Why count at all if you did not accept a specified amount?"

Appellant replied —

"There are certain human actions which cannot be explained."

When asked why he did not put the money on the top of his dressing table while he was dressing, instead of keeping it in the inner drawer, he replied that he had taken out a talisman from the drawer and instinctively kept the money in the inner drawer. Although he knew it was a raid, he did not complain or show Stevenson the money right away when he came in, because Stevenson had asked him about the tyres and the fish first. He did not mention about the discovery of the money on the window sill to Stevenson on the first occasion as he was only answering his questions. Neither did he ring up the Jitra police station when he found the money on the window sill.

He remembered the incident on 2nd April 1963 when police sergeant, Mohamed Ali (PW5) detained lorry No. PA. 9821 for illegally carrying excessive load but he denied that he had instructed him to release the lorry. He claimed that he merely gave advice on procedure on unloading and reloading of goods onto the lorry. He further said "he is now aware that PA. 9821 (lorry) belonged to Hup Seng Co." (one of the 3 companies which gave the monthly bribe) and that the entry No. 2432 in police diary (Exhibit P-8) was correct in so far as the occasion of the incident was concerned. (This exhibit P-8 showed that the appellant had on 2nd April 1963 at 6.10 p.m. ordered the Changloon police to open the police gate to enable lorry No. PA. 9821 to come into Malaya from Thailand after 6 p.m. and later at 7.45 p.m. gave instruction by telephone that police could not force goods which had been unloaded from this lorry (PA. 9821) to be reloaded back to it. It also showed that it was the appellant who telephoned to the Changloon police and not the police who telephoned to the appellant).

Gurbachan Kaur the wife of the appellant, said that she had on one occasion paid PW1 $11.20 for the fish. She remembered a Hari Raya party held in her house some time in March 1963 and that guests arrived from 7 p.m. to 7.15 p.m. She did not see PW1 at any time on that day. She remembered that on the day of her husband's arrest, PW1 had brought some fish which she cleaned and put into the refrigerator. Some 5 minutes before the police arrived, appellant after switching on the lights, called her from the porch of the house, as he had found some money lying on the window sill. Her husband wanted to find out whether the fishman had left the money there, and then went to his room to dress. Under cross-examination she said that normally she obtained from PW1 fish once weekly, and at times once or twice more. When asked whether it had occurred to her that it was unusual for a fish dealer to come to her house in flashy cars instead of vans to deliver fish to her, she replied that she did not know and that she also did not ask appellant where the fish came from.

The above is a brief summary of the defence.

There were 30 witnesses for the prosecution and 9 for the defence. The learned president had meticulously considered with great care and attention the evidence of each and every one of these witnesses. From the evidence he came to the conclusion that the appellant was guilty of the offence for which he was charged, and he accordingly convicted him.

The appellant submitted 35 grounds of appeal, of which 10 (grounds 9, 10, 11, 12, 13, 18, 22, 29, 34 & 35) were withdrawn and one (ground 14) was amended at the hearing.

Of the remaining 25 grounds of appeal some are overlapping and some repetitive over legal principles as well as over facts.

On the first ground of appeal, counsel for appellant contended that the charge was bad in law and that although the money ($350 marked notes) and the two fish could be included in one charge against the appellant, there should have been a separate charge in respect of the two tyres which were purchased with money supplied by the police as a trap.

From the evidence it is clear that the money, fish and tyres were jointly given to the appellant at the same time and place and for the same purpose, namely to bribe the appellant to show favour, and they formed one transaction. The bribe of the tyres did not form a separate transaction and did not constitute a separate and distinct offence. In any event, the appellant had received all the three as inducement to show favour to the lorry companies, and no injustice had been done to him by the inclusion of the tyres in the charge. There is no substance in this ground of appeal.

In his second ground of appeal it was contended that the facts did not support the charge. I find that there is ample evidence on the record to support the charge and the learned president's finding of fact. I am not prepared to interfere with such finding. Counsel further contended that no favour had been shown to the two companies Hup Seng Co. and Lum Co. The police diary (exhibit P-8) and the evidence of police sergeant (PW5) who was in charge of the police station at Changloon and of the officer of the immigration department (PW11), indicated clearly, not only did appellant show favour by telephoning PW11 and instructing him to open the police gate to allow Hup Seng Co.'s lorry PA. 9821 to come into Malaya from Thailand after 6 p.m., but also advised PW5 not to insist on reloading the goods back onto the said lorry.

In the case of *Charles Victor Carr*,[2] the Court of Criminal Appeal laid down the principle that on a charge of receiving bribe under the Prevention of Corruption Act, 1906, it was not necessary to prove that favour had been shown. "Prosecution have merely to prove that the accused person did receive a bribe as an inducement to show favour: they are not required to prove that he did actually show favour in consequence of having received the bribe." This legal point had been correctly dealt with by the learned president in his ground of judgment and no valid reason had been shown for disturbing his conclusions.

In grounds of appeal 3 to 7 the appellant's counsel contended that the learned president had wrongly admitted inadmissible evidence, which was hearsay, irrelevant, prejudicial to the appellant, tending to show that appellant was of bad character or had tendency to commit other offences or to show certain incidents and that he was wrong in disallowing an application for fresh trial. On these matters the learned president in his grounds of judgment said that he had excluded these pieces of inadmissible evidence from his record and had attached no weight whatsoever to them in coming to a decision in the case. He had excluded not only those objected to by appellant but also those which in his opinion were inadmissible or prejudicial to the defence. From the record it appears that a large number of these pieces of evidence were extracted from witnesses by defence counsel's severe cross-examination. I am satisfied that such improper admission of evidence had not in any way affected the learned president in coming to a just decision in the case. He was quite right in disallowing the defence counsel's application for a fresh trial.

The 8th ground of appeal alleges failure on the part of the prosecution to produce the statement of PW2 made by the latter in the course of police investigation. At the trial, appellant's counsel applied under section 113(ii) of the Criminal Procedure Code for a copy of the statement for the purpose of impeaching his credit. The prosecution produced the statement. The court acting under this section read the statement and after reading refused the application. On the following day the appellant's counsel alleged that the statement read by the court was not the statement required by him. What was required was a police statement recorded on 21st February 1963 in respect of another case concerning motor car No. K. 7102 which was alleged to have been used as a taxi. The court ordered this further statement to be produced and the prosecution was not able to do so.

The deputy public prosecutor claimed that he was not sure whether the file still existed and that the statement purported to have been made by PW2 in connection with the taxi incident could not be found. In his address to the court he said that according to the acting sergeant (not a witness in this case) the statement had been handed to the appellant who was then the O.C.P.D. of Jitra. Counsel for the appellant objected to the insinuation that "accused did away with the statement which is now missing."

All this is a storm in a tea cup. The evidence which PW2 had given was not of any particular importance to the case. Even if his credit was impeached there was ample other evidence to enable the learned president to have come to the conclusion as he did.

Ground No. 14 alleges failure to call material witnesses by the prosecution. This point has been dealt with by the learned president. The record shows that the prosecution had supplied to the defence a list of the names of the prosecution witnesses whom the prosecution was not calling. The appellant's counsel,

then intimated that the defence wanted only three of them and these were made available to the defence. At the close of the prosecution case, the deputy public prosecutor again handed to the defence a list of the witnesses from whom the prosecution had recorded statements and whom the prosecution was not calling as witnesses. The appellant's counsel informed the court that the defence did not require any of them.

Under section 134 of the Evidence Ordinance, 1950, no particular number of witnesses shall in any case be required for the proof of any fact.

In *Khoon Chye Hin* v. *Public Prosecutor*,[8] the Court of Appeal reviewed all the leading authorities and came to the conclusion that the calling of witnesses was a matter for the discretion of the prosecution. They quoted with approval the following passages:—

(a) "The rule which the judges have lately laid down that a prosecutor is not bound to call witnesses merely because their names are on the back of the indictment.

The witnesses however should be here because the prisoner might otherwise be misled; he might from their names being on the bill, have relied on your bringing them here, and have neglected to bring them himself. You ought, therefore, to have them in court, but they are to be called by the party who wants their evidence." — *per* Alderson B. in *Reg.* v. *Woodhead* (2 C. & K. 520).

(b) "That the counsel for the prosecution should call what witnesses he thought proper, and that, by having had certain witnesses examined before the grand jury whose names were on the back of the indictment, he only impliedly undertook to have them in court for the prisoner to examine them, as his witnesses." — *per* Parke B. in *Reg.* v. *Cassidy*, (1 F. & F. 79).

(c) "The prosecutor has a discretion as to what witnesses should be called for the prosecution, and the court will not interfere with the exercise of that discretion, unless, perhaps it can be shown that the prosecutor has been influenced by some oblique motive." — *per* Lord Thankerton in *Adel Muhammed El Dabbah* v. *Attorney-General for Palestine* ([1944] A.C. 156, 168).

(d) "There is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desire to prove. Ultimately it is a matter for the discretion of counsel for the prosecution." — *per* Lord Thankerton in *Malek Khan* v. *The King-Emperor* (72 I.A. 305, 314).

The Court of Appeal in *Samsuddin* v. *Public Prosecutor* [4] observed —

"It is clear from these authorities that the prosecutor has a discretion and also that if he does not call material witnesses who are available he runs the risk of having the presumption in illustration (g) to section 114 of the Evidence Ordinance raised against him. In the present case there was no attempt at concealment, no suggestion, as was said by Lord Thankerton in the case of *Adel Muhammed El Dabbah* v. *Attorney-General for Palestine* that the prosecutor has been influenced by some oblique motive. The witnesses were freely offered to the defence and in our opinion the presumption did not arise."

In our present case there was no attempt at concealment and no evidence that there was any oblique motive. The witnesses were freely offered to the defence not once, but twice. I hold that the presumption under the said section 114(g) does not arise.

Grounds 15 to 21 (ground 18 withdrawn) taken together really amounted to wrongful admission of hearsay evidence, tape-recorded conversation and films. The learned president had in fact considered all these points in his grounds of judgment and had borne in mind throughout, the important ruling in the Privy Council case of *Subramaniam* v. *Public Prosecutor* [5] which laid down the principle that:

"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made."

The records show that the principle enunciated above has been duly observed and applied by the learned president in coming to his verdict of the case.

Similarly on the tape-recorded conversation and films the learned president held that they were admissible. In support thereof he quoted the authority of *Rup Chand* v. *Mahabir Parshad & Anor.*,[6] and *Public Prosecutor* v. *Gurbachan Singh*.[7]

In *R.* v. *Mills* [8] it was held by the Court of Criminal Appeal that the evidence of the conversation recorded on tape-recorder was admissible and quoted with approval the following passage:—

"The inspector's evidence of the conversation was as much primary evidence as the evidence from the replaying of the tape-recorder. Each received it at the same time, the one recording it in the human memory, the other upon a piece of tape."

and further they said:—

"It is apparent therefore that in his judgment, the tape itself is primary and direct evidence admissible as to what has been said and picked up by the recorder."

The learned president remarked in his judgment that

"It is to be observed that in PW1's shop a tape-recorder and a cine-camera were installed for the purpose of taking pictures of certain persons who came to the shop, including Hashim and also of recording what they said.

It will be recalled that Hashim was called and identified when PW1 gave evidence (see page 21 — para D).

Three prosecution witnesses PW16, PW20 and PW26 saw Hashim come to the shop and handed over the money to PW1 on 4th of June 1963 at PW1's shop.

These three witnesses also gave evidence to the effect that Hashim came to the shop on 3rd June.

Pictures were taken by PW26 with the cine-camera on 3rd and 4th June and the firm confirmed this evidence given by PW1, PW20 and PW26."

and the learned president further said — (at page 806)

"The evidence clearly shows that is was the accused who played the leading part in this corrupt transaction and that the money and articles mentioned in the charge were given after various requests moving from the accused.

I believed the evidence of PW1 as to the negotiations not only in regard to the money but also the fish and tyres and how the money of $1,000 (the monthly bribe) was subsequently reduced.

This is confirmed by the evidence of the tape and the film.

All this was alleged to have been communicated by PW1, in his turn to Hashim bin Puteh.

I desire to make it clear that this part of the evidence was not admitted to support the truth of what was said by PW1 and Hashim but to explain Mr. Stevenson's and Hashim's subsequent actions under section 9 of the Evidence Ordinance."

It was further submitted by the appellant's counsel that the tape-recorder conversation was inaudible and unintelligible and therefore should be rejected. I myself have personally seen and heard the film and the tape-recorded conversation. They were not as clear as those seen and heard in a first class cinema. The learned president was satisfied with them and I can find no reason to disagree with him. His finding that there was, at the close of the prosecution, a case for the accused to meet, was supported by ample evidence, and I am not prepared to interfere with such finding.

In grounds 23 to 32 (ground 29 withdrawn) appellant's counsel contended that the learned president's findings of fact were wrong on the ground that he erred on facts, failed to consider defence adequately, misdirected himself, failed to consider character of PW1, and certain discrepancies in the evidence, untruthfulness of PW1, non-admission of police report, delay on the part of PW1 and wrong inference of accused's guilt.

The learned president has written a most painstaking and careful judgment containing 125 pages in which he reviewed in detail the evidence of each and every witness of importance both for the prosecution and the defence. He noted their discrepancies, and carefully considered the defence and the prosecution story. After reviewing all, he came to the conclusion that he had "no hesitation in rejecting the explanation of the accused" and he disbelieved him. He was satisfied with the truth of the evidence of PW1. He accepted his evidence that the money ($350), the two fish, and the two tyres were given to the appellant as bribes and given in the manner described by him. The learned president saw no reason to disbelieve PW1 who was subjected to long and severe cross-examination and adverse comments by the defence counsel at trial. The learned president's findings of fact are fully supported by the evidence on the record. The learned counsel for the appellant has not satisfied me that the president has in any way misdirected himself or that any advantage enjoyed by him by reason of his having seen and heard the witnesses, was not sufficient to explain or justify his conclusions. There is a heavy burden on the appellant who seeks to displace the conclusions arrived at by the trial judge on questions of fact. The principle as laid down by our Court of Appeal in *Tan Tek Yan* v. *Samuel* [9] is that the appellate court even though it is disposed to come to a different conclusion on the printed evidence, will not upset the finding of a trial judge on a question of fact which turned solely on the credibility of witnesses unless it is satisfied that the trial judge was plainly wrong."

In this case after considering the printed evidence I am not disposed to come to a conclusion different from that of the learned president. Neither am I satisfied that the learned president was wrong, and least of all plainly wrong. There is no real merit in any of the points raised by the appellant.

The last ground of appeal (ground 33) is on "corroboration". The learned president in his grounds of judgment (page 820 onwards) had held that the complainant (PW1) was not an accomplice but he thought it was desirable to treat him as one. He found corroboration not only in the evidence of the prosecution witnesses but also in documentary evidence. He was of the opinion that such evidence bore directly on the commission of the crime and tended to connect the accused with the crime as was required in the case of *Rex* v. *Baskerville.*[10] The learned president went on further to say that

"I have heard the defence but I am not convinced of its truth. Having thus heard the evidence I have also to consider if it is a reasonable or probable story. I still find that the defence version is not reasonably true and that it has thrown no doubt on the case for the prosecution. I am aware that corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime."

He also reminded himself that accomplice's evidence is generally held untrustworthy because as a participator in crime and consequently an immoral person, is likely to disregard the sanction of an oath, and under a promise of pardon or in expectation of one, it would lead him to favour the prosecution. He had scrutinised closely the grounds of reliability, the credibility of the complainant, and had weighed his evidence with full knowledge and recognition of its accomplice character. He had also weighed the evidence and other circumstances which were in favour of the accused. He was fully aware of

the danger of acting on the uncorroborated evidence of an accomplice but "having directed my mind to it, I have no hesitation in believing the evidence adduced on behalf of the prosecution" and he accordingly convicted the accused.

There is one more point which I wish to deal, namely the contents of the file PEP (T) 236/63. I myself have read through them; so had the learned president. The contents would not have affected the learned president's verdict even if the said file was officially produced and admitted as an exhibit at the trial.

There is ample evidence on the record to support the conviction. In my opinion no miscarriage of justice had occurred in this case. The appeal is dismissed.

Appeal dismissed.

Solicitors: *Jag-Jit Singh & Co.*

WONG POH OI v. GERTRUDE GUOK & ANOR.

[O.C.J. (Buttrose J.) April 6, 1966]

[Singapore — Suit No. 670 of 1964]

Contract — Building contract — Extras — Failure to pay for — Whether evidence of repudiation of contract.

The defendants had agreed to build a house for the plaintiff. The plaintiff caused certain extra items to be done which she claimed were necessary to conform to the original plan. The defendants claimed the work were extras and demanded payment of them. On failure of such payment the defendants purported to repudiate the contract and sold the property to another person. The plaintiff claimed damages.

Held: (1) the delay or refusal of the plaintiff to pay for the extras cannot be regarded as showing an intention no longer to be bound by the contract and the defendants were not justified in repudiating the whole contract;

(2) the extra works became necessary to make the building conform to the original plan and therefore the plaintiff was not liable to pay for them and the defendants were not justified in repudiating the contract when the plaintiff refused to pay for them;

(3) the defendants therefore were in breach of contract and liable for damages to the plaintiff.

Cases referred to:—

(1) *Mersey Steel and Iron Co.* v. *Naylor, Benzon & Co.* (1882), 9 Q.B.D. 648.

(2) *Cornwall* v. *Henson* [1900] 2 Ch. 298 at p. 303.

(3) *Freeth* v. *Burr* L.R. 9 C.P. 213.

CIVIL SUIT.

David Tar See for the plaintiff.

L. A. J. Smith for the defendants.

Cur. Adv. Vult.

Buttrose J.: This action arose out of the repudiation by the defendants of their agreement to build a house for the plaintiff. The facts were that the firm of Phoenix Building Enterprise, of which the two defendants were partners, was the developer of a housing estate at Holland Heights. Their *modus operandi* was to sell the land and the building to prospective purchasers by two agreements — one for the sale of the land and the other for the sale of the building. In the present case the plaintiff agreed to purchase the land under the sale of land agreement for $6,000 and the building under the building agreement for $31,900.

It was provided in the sale of land agreement that in the event of the purchaser seeking to mortgage or charge the land for the purpose of financing the purchase thereof and the erection of the dwelling house Phoenix Building Enterprise as vendors would at the request of the purchaser and upon the purchaser executing a form of mortgage or charge for the purpose aforesaid, execute on the date of such mortgage or charge, an assignment of the right, title and interest to the said land and premises in favour of the purchaser.

The plaintiff paid the $6,000 for the land and also made certain progress payments in accordance with the progress of the building operations as set out in the schedule to the building agreement amounting to $9,900. The sum together with the $6,000 paid for the land represented a total of $15,900 actually paid by the plaintiff leaving a balance of $22,000 to be raised on mortgage. Reference is made to this amount to be raised on mortgage in clause 3(a) of the sale of land agreement.

In addition there were certain extras ordered by the plaintiff under a works order dated the 15th October, 1962, amounting to $4,913. These extras were not in dispute and were admitted by the plaintiff. What was in dispute was the time of payment for them.

The other matter in dispute arose in connection with a further 9 items of extras which the defendants maintained were extras ordered by the plaintiff without their consent and consequently in breach of clause 7 of the building agreement. These 9 items of extras were carried out at a cost of $1,460. The plaintiff contended that these 9 items were not extras ordered by her but in fact work indispensably necessary to conform with the original terms of the contract and the plans and specifications. In other words, the plaintiff said that the defendants had deviated from the original plan and made substantial changes in the position, siting and elevations of the building from that originally agreed upon without her knowledge and consent and consequently she was entitled to have the house restored to a state or condition as similar as possible to the one she had contracted to buy and which the defendants had contracted to build for her. As such the plaintiff maintained these 9 extras were sanctioned by the defendants as being indispensably necessary and involved her in no